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Minerals Corporation

BEFORE THE DIVISION OF OIL, GAS AND MINING,  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH

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IN THE MATTER OF THE REQUEST )	ADDENDUM TO WESTERN STATES'
FOR AGENCY ACTION AS FILED BY )	OBJECTION TO PETITION FOR
JUMBO MINING COMPANY, DRUM )	COMMENCEMENT OF INFORMAL
MINE, MILLARD COUNTY, UTAH )	PROCEEDINGS
)	
)	Cause No. M/027/007

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Western States Minerals Corporation ("Western States")  
offers this addendum to its earlier Objection to Petition for  
Commencement of Informal Proceedings.

By conference call on November 19, 1990, the Director  
decided that two issues would be addressed in this hearing in the  
above-captioned cause: first, whether the so-called "test" leach  
proposed by Petitioner, Jumbo Mining Co. ("Jumbo"), constitutes  
mining activity; and second, whether the Division's staff acted  
properly in making the determination that the proposed leach did

in fact constitute mining activity.<sup>1/</sup> In the conference call, the parties acknowledged: (a) that the two heaps at issue (HG7 and LG2), are subject to Western States' operating permit and reclamation bond; and (b) that Western States had not given Jumbo permission to operate HG7 and LG2.

In light of the Division's regulations, the staff was completely justified in its conclusion that Jumbo's proposed actions constituted mining operations and furthermore, Western States would be prejudiced by Jumbo's proposed operations.

- I. DOGM's regulations demonstrate that Jumbo's proposed actions are "mining operations."

Jumbo proposes to operate heaps HG7 and LG2 for 60 days. During those operations, gold will be extracted from the heaps. In asking for Division approval, Jumbo explained to the Division that it would apply a cyanide solution to the heaps at issue and recover gold from its proposed operations. In a May 30, 1990, letter to Lowell Braxton from E. B. King on behalf of Jumbo, Jumbo made the following representation to the Division:

I should also make it clear that any gold which might be recovered as a result of this test is: a) unavoidable, in that there is no practical way to conduct the test, other than

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<sup>1/</sup> Western States believes that in light of the partial permit transfer last summer, Jumbo has no right to conduct its proposed "test" irrespective of the Board's decision on these two issues.

to use the existing leaching system, which includes a weak cyanide solution .....

Letter at pages 1-2 (Attachment A).

The Division's regulations define "mining operations" as follows:

"Mining operations" means those activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit, including, but not limited to, surface mining and the surface effects of underground and in situ mining; onsite transportation, concentrating, milling, evaporation, and other primary processing.

Utah Admin. R. 613-1-106 (emphasis added). Spraying cyanide solution on a heap and extracting gold clearly constitutes "concentrating" and "other primary processing" and thus clearly falls within the definition of "mining operations" under the Division's rules. While Jumbo contends that mineral extraction is merely a by-product of its proposed operations, Jumbo's intent is irrelevant. The Division was correct in concluding that Jumbo's proposed operations constituted mining activity or mining operations under the Division's rules and was correct in denying Jumbo's request to conduct such activity without Western States' consent.

II. Western States would be prejudiced by Jumbo's proposed operations.

The record shows that since the sale of the Drum Mine from Western States to Jumbo on October 12, 1988, Jumbo has refused to assume its contractual responsibility for all reclamation for the Drum Mine. Jumbo's actions have prejudiced and damaged Western States and Western States seeks, among other things, recovery for these damages in Colorado district court litigation. Western States Minerals Corp. v. Asoma (Utah) Inc. et al., No. 90 CV 3966 (D. Jefferson County, filed Oct. 24, 1990). However, Jumbo's proposed operation of heaps LG 2 and HG 7 would further prejudice Western States.

For example, in its June 22, 1990, submission to the Division (Attachment B), Jumbo submitted its "Proposal For Amendment of MRP and Bond For Heaps No. 2 LG and No. 7." That proposal, outlining Jumbo's reclamation plans for those heaps, indicates that it would use all available topsoil at the site to reclaim them. The issue of responsibility for stockpiling topsoil at the site, however, is in litigation in the Colorado district court, and the Division has taken the position that Western States retain responsibility for topsoil stockpiling until the reclamation issue is ultimately resolved. Approval of Jumbo's proposal, therefore, would directly impact Western

States' current reclamation obligations and thus further prejudice Western States.<sup>2/</sup>

To avoid the inevitable further prejudice that would result from Jumbo's proposed operations, the Division should deny Jumbo's petition.

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2/ To prevent this type of prejudice, Western States, in its First Claim for Relief in its Complaint in the Colorado litigation, seeks to enjoin Jumbo from doing exactly what Jumbo is asking DOGM to permit it to do here, that is:

conducting any leaching or mining activities on the Properties covered by Western States' operating permits and bond during the pendency of this litigation and permanently thereafter.

¶ 36.

CONCLUSION

The Division's own rules clearly demonstrate Jumbo's proposed actions constitute "mining operations." The Division's decision to prohibit mining operations by Jumbo on HG7 and LG2 without Western States' consent is supported by the Division's rules and should be affirmed.

In addition, Jumbo's proposed operations, if permitted, would further prejudice Western States and complicate the eventual resolution of the dispute between Western States and Jumbo. The Division should deny Jumbo's petition and allow this dispute to be finally resolved by the Colorado district court.

DATED this 30 day of November, 1990.

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